

In April 2003 the Office accepted that appellant, then a 54-year-old flat sorting machine operator, sustained a right shoulder strain and left wrist tenosynovitis due to her repetitive work

duties.¹ In July 2003 it accepted that she sustained bilateral carpal tunnel syndrome due to her repetitive work duties.² The Office paid appellant's compensation for periods of disability.

The record contains a number of reports from March and April 2003 in which Dr. Anne H. Kubina, an attending family practitioner, detailed the treatment of appellant's wrist and shoulder problems. On March 28, 2003 Dr. Kubina indicated that appellant's left wrist was swollen and that movement of the wrist was painful. On April 18, 2003 she noted that appellant showed slight tenderness in the left thenar area and some pain with some lateral flexion of the wrist on the left side. Appellant had full range of motion in both wrists and no tenderness or decreased range of motion in the biceps area. Dr. Kubina indicated that appellant could return to her regular work. On April 29, 2003 she stated that appellant had tenderness in both wrists over the carpal tunnel distribution (at the distal end of the ulna and the radius) as well as right shoulder tenderness. Dr. Kubina reported decreased motion in appellant's wrists and right shoulder and indicated that she could only perform limited-duty work with no repetitive wrist movements or work above the chest.

On July 17, 2003 Dr. Steven R. Novotny, an attending Board-certified orthopedic surgeon, indicated that appellant reported having increased symptoms in her arms. He recommended that appellant undergo carpal tunnel releases in both wrists. On September 5, 2003 Dr. Novotny performed bilateral carpal tunnel releases.³ The procedures were authorized by the Office. The record contains several reports in which he detailed appellant's progressive recovery from the carpal tunnel surgeries. On October 15, 2003 Dr. Novotny noted that examination showed that appellant had no focal tenderness and was neurologically intact. He released her to full-duty work without restrictions and stated, "She should expect some minor aches and pains but these should fade with time." In late December 2003, Dr. Novotny indicated that appellant appeared to have a superficial infection of the dorsal portion of her right hand and took her off work. He detailed the improvement of this condition and returned her to regular work effective January 13, 2004.

On January 27, 2004 Dr. Novotny stated that appellant reported that she was feeling dramatically better. Appellant reported seeing a rheumatologist and stated, "Every indication is that she has a significant rheumatologic problem going on. Otherwise, the hands are feeling fine." On examination, appellant showed no signs of infection, a full range of motion and was neurologically intact. Dr. Novotny discharged appellant from his care and indicated that she would follow up with her rheumatologist "to help control the symptoms." He stated, "[Appellant] is at [maximum medical improvement]. There is no [partial permanent impairment] rating." With respect to her carpal tunnel syndrome, appellant could return to full-duty work without restrictions.

¹ This claim bore the case file number 092032538.

² This claim bore the case file number 092034455. In July 2003 the two claim files were combined with number 092032538 as the master file.

³ The record does not appear to contain an operation report for these procedures.

On July 15, 2005 appellant claimed a schedule award based on her accepted employment injuries. In a September 19, 2007 letter, the Office advised appellant that she might be entitled to a schedule award for the permanent impairment of her arms. It requested that she provide a physician's report on permanent impairment in accordance with the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). The Office indicated that the physician should state whether maximum medical improvement had been reached and include a full description of the objective findings for each joint affected, including decreases in strength, atrophy of muscles, changes in sensation, and loss of motion. The physician should provide range of motion findings for the wrists upon dorsiflexion, palmar flexion, radial deviation and ulnar deviation motions and for the shoulders upon forward elevation, backward elevation, abduction, adduction, internal rotation and external rotation motions. If the joint is ankylosed, the physician should indicate at what degree the joint is ankylosed. The Office advised appellant to submit this information within 60 days from the date of the letter.⁴

In a March 27, 2008 decision, the Office determined that appellant did not establish that that she sustained permanent impairment of her arms. It found that appellant did not submit medical evidence any permanent impairment to her arms based on her accepted medical conditions.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁷

ANALYSIS

The Office accepted that appellant sustained a right shoulder strain, left wrist tenosynovitis and bilateral carpal tunnel syndrome due to her repetitive work duties. On September 5, 2003 Dr. Novotny, an attending Board-certified orthopedic surgeon, performed carpal tunnel releases in both of appellant's wrists. The procedures were authorized by the Office. In a March 27, 2008 decision, the Office determined that appellant had not established that she was entitled to schedule award compensation for permanent impairment to her arms.

⁴ Appellant did not submit the requested information within the allotted time.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

The Board finds that appellant did not submit sufficient medical evidence to show that she sustained any permanent impairment of her arms. Appellant did not submit any report that contained an impairment rating that was derived in accordance with the standards of the A.M.A., *Guides*.

In a January 27, 2004 report, Dr. Novotny stated that on examination she showed no signs of infection, had full range of motion and was neurologically intact. He discharged appellant from his care and stated that she was at maximum medical improvement. Dr. Novotny specifically stated, "There is no [partial permanent impairment] rating." He indicated that, with respect to her carpal tunnel syndrome, appellant could return to full-duty work without restrictions.⁸

Appellant also submitted reports from March and April 2003 in which Dr. Kubina, an attending family practitioner, detailed the treatment of her wrist and shoulder problems. However, Dr. Kubina did not provide any impairment ratings of appellant's arms in accordance with the standards of the A.M.A., *Guides*. She did not provide any indication that appellant had reached maximum medical improvement. In fact, Dr. Kubina's last report in the record, dated April 29, 2003, shows a higher level of symptoms and objective findings than had been found a week or two earlier. Moreover, these reports are dated prior to the date that Dr. Novotny performed surgery, further lessening their probative value on the issue of permanent impairment.

The Office provided appellant with an opportunity to provide medical evidence in support of her schedule award claim. On September 19, 2007 it advised appellant of the specific information that a physician should provide in support of her claim. However, appellant did not respond to the Office's request within the allotted time. For these reasons, she did not meet her burden of proof to show that she is entitled to schedule award compensation for permanent impairment of her arms.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award as she failed to establish permanent impairment of her arms due to her accepted medical conditions.

⁸ Dr. Novotny indicated that appellant reported seeing a rheumatologist and suggested that she had rheumatologic problems in her arms, but he did not provide any further detail regarding this matter.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 27, 2008 decision is affirmed.

Issued: October 21, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board